

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN GAY ANN MASOLO**, on January 22, 2001
at 3:10 P.M., in Room 137B Capitol.

ROLL CALL

Members Present:

Rep. Gay Ann Masolo, Chairman (R)
Rep. Kathleen Galvin-Halcro, Vice Chairman (D)
Rep. Bob Lawson, Vice Chairman (R)
Rep. Joan Andersen (R)
Rep. Norma Bixby (D)
Rep. Gary Branae (D)
Rep. Nancy Fritz (D)
Rep. Verdell Jackson (R)
Rep. Hal Jacobson (D)
Rep. Larry Lehman (R)
Rep. Jeff Mangan (D)
Rep. Joe McKenney (R)
Rep. John Musgrove (D)
Rep. Alan Olson (R)
Rep. Ken Peterson (R)
Rep. Butch Waddill (R)
Rep. Allan Walters (R)
Rep. Merlin Wolery (R)

Members Excused: None

Members Absent: None

Staff Present: Connie Erickson, Legislative Branch
Nina Roatch, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 108, 1/15/2001; HB 110,
1/15/2001
Executive Action: HB 53; HB 108; HB 110; HB 161;
HB 193; HB 267

HEARING ON HB 108

Sponsor: REPRESENTATIVE Mark Noennig, HD 9, Billings

Proponents: Bob Vogel, MSBA
Bill Cooper, OPI
Erik Burke, MEA-MFT

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE NOENNIG said he brought the bill at the request of **MSBA**. The purpose of **HB 108** is to standardize the process for cooperative purchasing that has been lacking in the law. Under the present law, each school district must separately advertise and then consider bids for purchases even if multiple districts have agreed in advance on the parameters of the purchases. Presently, the only way that school boards can engage in joint purchasing is under the authority of the Department of Administration under Section 2-18-71. Previously there was a bill in 1997 that allowed such cooperative purchasing for health insurance. The right was not extended beyond health insurance. **HB 108** authorizes a school board to join other school boards to purchase items they have in common from chalk, paper, flooring, roofing, etc. It insures that there will be adequate notice to the public. It requires two separate publications over the course of two weeks. It requires publication in every county the school district is located within. It requires the contract be let to the lowest responsible bidder. The idea is save money.

Proponents' Testimony:

Bob Vogel, MSBA, said the members of MSBA did approve this idea as a top priority at their annual meeting. **HB 108** would provide a standard process for cooperative purchasing that has been lacking in the law to date. As school districts strive to improve their efficiency in allowing and allocating the spending of their funds, cooperative purchasing is an area with great promise. Under present law, each school district must separately advertise, consider and approve a bid, even if local school districts have agreed on the parameters of the purchase. Because of this process, cooperative purchases have been scattered and have not provided the reduction in costs that is projected in the fiscal note for this bill. The only way a school district can efficiently engage in cooperative purchasing right now is to join a state agency in purchasing cooperatively under Title 18, Chapter 4, and then only if the Department of Administration allows the school district to do so. Previous legislative

sessions have not addressed the law systematically. The bill allows a permissive joining of districts and provides a process of notification to the public. The bill does not disrupt present laws. **EXHIBIT (edh17a01)**

Bill Cooper, OPI, said his organization supports this bill. This is a very good bill.

Erik Burke, MEA-MFT, said his organization would appreciate the committee's support of this bill.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE JACKSON had a question for the **SPONSOR**. On page 2, number 5, would you define responsible? The **SPONSOR** said, it is current law, meaning there is discretion when the bids are being evaluated by the trustees of a school district to determine whether or not, when a bid is submitted, if it is the lowest bid, whether the bidder is a responsible bidder, someone with experience in the industry and is not subject to sanctions. It is subjective, he would suspect.

REPRESENTATIVE JACKSON had the same question for **Mr. Cooper**. **Mr. Cooper** said it means the bidder has met the requirements that are stipulated in the bid. The requirements could be some of the things mentioned by the **SPONSOR**.

Closing by the Sponsor:

REPRESENTATIVE NOENNIG said he would direct the committee's attention to the fiscal note in their possession. It is likely that a school district will reduce its costs of supplies and services by participating in a cooperative contract.

HEARING ON HB 110

Sponsor: **REPRESENTATIVE MARK NOENNIG, HD 9, Billings**

Proponents: **Bob Vogel, MSBA**
Erik Burke, MEA-MFT
Bill Cooper, OPI

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE NOENNIG said, this bill is brought at the request of **MSBA**. **EXHIBIT (edh17a02)** The purpose of **HB 110** is to eliminate the distinction that appears to be unfair in the law that treats school districts different from other governmental agencies with regard to the investment and endowment funds. These are funds that are donated from private donors for educational purposes. There is a uniform act that is called the Uniform Institutional Management of Funds Act which was included in Exhibit 2. That applies to all government agencies' actions of handling and investing endowment funds. Under the act, agencies have a standardized practice for inventing money. The act appears to apply to school districts. It refers in sub-section five of 7-23-102 to one of the definitions of institutions as for educational purposes. The commission even talks about examples of scholarships for students or medical care for indigent patients. There is another specific code in Title 20 which says that school districts are not allowed to handle their endowment funds in the same manner. It carves school districts out of the act by saying "notwithstanding any other provision of the law to the contrary." That is the change that is attempted to be made by **HB 110**. The purpose of the bill is to put school districts on a level playing field with other government agencies with regard to the investment standards that can be made with endowment funds. It would allow greater return on investments because school districts are increasingly relying on the generosity of their community in accomplishing their objectives.

Proponents' Testimony:

Bob Vogel, MSBA, said **HB 110** is another top priority of his organization. The bill would increase the efficiency of the operations of school districts if they were allowed to be able to invest their endowment funds as this change would make possible. It would increase local school districts' control over the investment of the endowment fund. It would put school districts on equal footing with other government agencies. It would put districts under the Uniform Institutional Management of Funds Act, Title 72. This bill addresses the conflict between Title 20 and Title 72. **EXHIBIT (edh17a03)**

Erik Burke, MEA-MFT, said the bill has his organization's support.

Bill Cooper, OPI, said OPI feels this is a good bill and they support it

Opponents' Testimony: None

Questions from Committee Members and Responses:

REPRESENTATIVE PETERSON had a question for **Mr. Vogel**. As he recalled, a few years ago there were investments in California or Arizona that went sour. Montana had some investments included. Would this allow the school districts to get involved in those kinds of investments? **Mr. Vogel** said it was a different situation. They were investments in Collateralized Mortgage Obligations and did cause some trouble in Helena and other districts across the state. Those were with public funds and not endowment funds. This bill would allow for the loosening of the restrictions on what can be invested in and the local board of trustees and the county treasurer are accountable for those investments. They audited and reviewed on an annual basis.

REPRESENTATIVE PETERSON asked, is there any kind of security, bonded, etc., given for the investment? **Mr. Vogel** said, are you talking about investing public funds? **REPRESENTATIVE PETERSON** said no, he wanted to know about endowment funds. **Mr. Vogel** referred him to page 2, line 10, of the bill. "As a custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county and that no later than July 1, of each fiscal year, the country treasurer shall report to the trustees of each district on the condition of its endowment." Yes, there is accountability.

REPRESENTATIVE MANGAN had a question for **Mr. Vogel**. What do schools use the money for? **Mr. Vogel** replied that in most cases where they are not specifically given to a school district for an intended purpose, only the interest off those endowment funds can be used by the school district. It is important to maximize the return on the money. There are cases where the benefactors will state a specific purpose for the use of the money and then, sometimes, the principle can be used. The Lewistown area has more than six million dollars in an endowment fund. It is happening more and more.

REPRESENTATIVE JACOBSON had a question for **Mr. Vogel**. What are the reasons for not allowing a school district to invest in the same manner as other government agencies? **Mr. Vogel** answered, as near as he can tell the old provisions in Title 72 and Title 20 have been there since at least 1973. They are not clear as to why those restrictions were placed, but they were probably similar to restriction placed on public monies at that time.

Closing by the Sponsor:

REPRESENTATIVE NOENNIG said in answer to **REPRESENTATIVE JACOBSON's** question, Title 20 came before Title 72. He felt the restriction had been overlooked. He wanted to point out that 72-30-206 under the uniform act does provide for the standard of care and management necessary for the funds being talked about.

EXECUTIVE ACTION ON HB 108

Motion: **REPRESENTATIVE WOLERY** moved that **HB 108 DO PASS.**

Discussion: None

REPRESENTATIVE LAWSON called for the question.

Motion/Vote: **REP. WOLERY** moved that **HB 108 DO PASS.** Motion carried 18-0.

EXECUTIVE ACTION ON HB 110

Motion: **REPRESENTATIVE OLSON** moved that **HB 110 DO PASS.**

Discussion: None

REPRESENTATIVE WALTERS called for the question.

Motion/Vote: **REP. OLSON** moved that **HB 110 DO PASS.** Motion carried 18-0.

EXECUTIVE ACTION ON HB 161

Motion: **REPRESENTATIVE OLSON** moved that **HB 161 DO PASS.**

Discussion:

Connie Erickson, LSD, said that **REPRESENTATIVE MANGAN** had requested she write an amendment for the bill.

REPRESENTATIVE MANGAN moved that his amendments to **HB 161 DO PAS**

Discussion:

Connie Erickson, LSD, explained the amendment. This is the amendment suggested by MSBA during the presentation of the bill. It has to do with providing an option to a school district to identify a child with a disability without specifying the

specific disability. It would be up to the school board to decide if they wanted to do that.

Motion/Vote: REP. MANGAN moved that the **AMENDMENT TO HB 161 DO PASS. Motion carried 18-0.**

REPRESENTATIVE WOLERY said he was going to vote against the bill as he had received calls from small schools in his district and the county superintendent saying they were worried about an unfunded bill. Sometimes a voluntary situation becomes a mandate. A child transferring in from another district that had received special care would expect it in the new district.

REPRESENTATIVE MUSGROVE said he also received calls from a county superintendent and a superintendent of a smaller school addressing the same concerns.

REPRESENTATIVE JACKSON said, when he visited the schools in his district, he found many cases where local funds were being used to pick up special education costs. If he understands the bill correctly, the school would have to pick of the extra costs incurred by this bill.

REPRESENTATIVE ANDERSEN, said she had received a call from the county superintendent in her district, and he was very concerned by the extra costs that might come with the bill.

Motion/Vote: REP. MANGAN moved that **HB 161 AS AMENDED DO PASS. Motion failed 8-10 with REP. GALVIN-HALCRO, REP. NORMA BIXBY, REP. BRANAE, REP. JACOBSON, REP. MANGAN, REP. PETERSON, REP. FRITZ AND REP. WADDILL voting AYE.**

REPRESENTATIVE LAWSON made a reverse motion to table the bill by a vote of 10 to 8.

EXECUTIVE ACTION ON HB 53

Motion: **REPRESENTATIVE MANGAN** moved that **HB 53 DO PASS.**

Discussion:

REPRESENTATIVE OLSON said he was very impressed with the testimony that was given on this bill. He has had the opportunity with work with several Native American school boards. When he was president-elect of MSBA, the organization put a member of the Indian School Board Caucus on MSBA. The majority of the reservation boards he worked with were made up of Indians. What the bill asks for, the Indians can already do. He wouldn't need this bill if he was on the Indian board of trustees, to hire

an Indian of equal qualifications. The law books are continually cluttered up with laws that we don't need. That is what he would see the committee doing if they affirmed this bill.

REPRESENTATIVE MANGAN said the statistics are clear. Indian teachers make up 1.9% of the teachers in Montana. The bill will put the preference in statute. He had heard a great amount of testimony for the bill but at the hearing he heard no opponents. It is sad that we need this bill, but if it will increase the number of Indian teachers in these schools, that is wonderful.

REPRESENTATIVE PETERSON said he does not believe in preference hiring. He is a veteran and he did not want preference because he was one. He does not see a need for preference hiring on reservations. The school board is made up of predominately Native Americans and they make the decisions all the time. The Native Americans he has met in the legislature are perfectly capable of doing their job, just as capable as anyone else. I am going to vote against this bill.

REPRESENTATIVE BIXBY said it is very critical that they have Indian teachers in the districts. Preferences send a message. Indians should be hired for the jobs on the reservations but it just doesn't happen. This is not a mandate, but does send the right message.

REPRESENTATIVE WALTERS said on a fact finding trip to Lame Deer, he saw a 24 year old Indian hired as a teacher's aide and apparently they had used preference hiring too freely because several weeks after he started working it was discovered he couldn't read or write. He doesn't think preferences work and if there are to be role models, they need to be good ones.

REPRESENTATIVE BRANAE said he worked in a school setting where there was an Indian tutor who he knows was responsible for saving many students from dropping out of school. She worked very hard and the students related to her. He was impressed with the way the Indian students attached themselves to her. He believes in preference hiring.

CHAIRPERSON MASOLO said she was very impressed with the testimony given during the hearing. She has been consistent against preferential hiring for any reason. She had called the Law Library because of concern about the Montana Human Rights Act involved in this bill. Attorney General, Marc Racicot, wrote to James C. Nelson in Glacier County, "You have requested my opinion concerning the following question:

Does the prohibition in the Montana Human Rights Act against radical discrimination apply to employment

decisions by public school boards whose districts lie wholly or partially within an Indian reservation so as to render unlawful the granting of employment preferences to Indians, even when such preferences are required by tribal resolution or ordinance?"

The opinion given was:

"The Montana Human Rights Act applies to public school districts lying wholly or partially within Indian reservations on district-owned lands and prohibits the school district from granting employment preferences to Indians unless specifically required by federal statute. Indian tribes do not have a federally-protected interest in requiring that such preferences be granted their members or other Indians."

The **CHAIR** said, she looked into this because, as a white teacher in East Helena, she felt she had done more for Native Americans in her classroom with children spread across East Helena than other teachers. She said this is a local issue and should be handled on the local level. Let them hire the most qualified person for the job. Hopefully that will be a Native American. She felt the Montana Human Rights Act will enter into this bill if it is passed. She is going to be consistent with her vote in the legislature and vote against the bill.

REPRESENTATIVE MUSGROVE said one of the things we always have to consider is for years we have had a preference system and that preference system has been against the Indian. This preference gives us a balancing system. He is in favor of the bill. It is a statement the committee should make.

REPRESENTATIVE WALTERS called for the question.

Motion/Vote: REP. **MANGAN** moved that **HB 53 DO PASS**. Motion failed 7-11 with **BIXBY, BRANAE, FRITZ, GALVIN-HALCRO, JACOBSON, MANGAN, and MUSGROVE** voting aye.

REPRESENTATIVE LAWSON moved that **HB 53** be tabled by a reverse vote on the above motion.

EXECUTIVE ACTION ON HB 267

REPRESENTATIVE MANGAN moved that **HB 267 DO PASS**.

Discussion:

REPRESENTATIVE MANGAN said that this is a simple bill. It allows a mix of federal and state money in higher education. Currently a tribal college is not eligible for state money. This bill will make them eligible. This bill is a push, the amount of money is

not going to change. There is no new allocation of funds. It is a process where they request money in a competitive grant type procedure. **Mr. Cooper** had told the committee that he thought getting the money was not a competitive process, but today has said that further investigation reveals it is a competitive process.

REPRESENTATIVE OLSON asked that **Mr. Cooper** refresh the committee on the competitive issue. **Mr. Cooper** said the other day he said that there was not a competitive feature to receiving this money. After he got back to his office and looked for a clarification of this issue and he found that the schools do compete. He went further and found which tribal colleges grant funds and which do not. **EXHIBIT (edh17a04)** He said if the tribal college received some of the available state money, then it would receive less federal money.

REPRESENTATIVE ANDERSEN said the fiscal note said there would be no fiscal impact to the state, but significant impact at the local level. She asked **Mr. Cooper** to explain if he could. **Mr. Cooper** said school districts have the ability to access one mill at the high school level and the elementary level for adult basic education. He believes that is what the fiscal note is referring to at the local level. **REPRESENTATIVE ANDERSEN** said she was aware of the situation he referred to, but since the school district currently has this ability she wondered if this bill would change its ability to do that. **Mr. Cooper** said no.

The **CHAIR** had a question for **Mr. Cooper**. The school has to have a program in place to be able to explain it. Is that true? **Mr. Cooper** said, yes, it has to have a program and fill out an application. The application has to meet the requirements and, if it does, it becomes one of the successful schools to access the funds. There have been cases where the application did not meet the criteria of the application and that school receives no funding from this program. The **CHAIR** asked **Mr. Cooper**, who decides this? **Mr. Cooper** said, those decisions are made in OPI's vocational and adult departments and when those decisions are made they bring in people from the field to help make the evaluation.

REPRESENTATIVE PETERSON had a question for **Mr. Cooper**. If a college receives federal funds for adult education, and then qualifies for state funds, that offsets the federal funds and the total amount of money it receives is the same? **Mr. Cooper** said, basically that is correct. The only thing this changes is that currently community colleges and school districts can access both the federal money and the state money and once OPI has a pool of successful applicants, they take the pool of money and distribute

it with a minimum amount at \$20,000 a grant. At present, if a tribal college received a \$20,000 grant, it would all come from federal money and it would receive no state dollars. The bill would allow, if it is a \$20,000 grant, the school might get \$15,000 from the federal and \$5,000 from the state.

REPRESENTATIVE BIXBY told **Mr. Cooper** that the only money she was aware of Dull Knife Memorial College receiving was the TL36 dollars. **Mr. Cooper** said, in checking OPI records, Dull Knife is able to access these funds.

REPRESENTATIVE JACKSON asked **Mr. Cooper** if there were any state or local requirements to access the federal money? **Mr. Cooper** said there is a match, but he is not sure how much the match is.

REPRESENTATIVE MANGAN said he wanted to make a point about the last bill and the present bill. If **HB 267** goes down, it will show exactly why we needed **HB 53**.

{Tape : 1; Side: B}

REPRESENTATIVE PETERSON said he was not sure he could agree with **REPRESENTATIVE MANGAN** and said that the thing that concerns him is that he hears that the Blackfeet Community College has no program and he sees a crying need for such a program, he sees a crying need for education. It wasn't clear to him to what extent any advantage is being taken now of this program. There really aren't many dollars that they can realize from it, so he sees no purpose in the bill for these colleges. He felt like he is riding the fence on the issue. He sees no purpose in the bill. He would like help in understanding the need.

REPRESENTATIVE JACKSON said he knows there are a lot of strings attached to federal money, much more so than with state money. There are not only matching funds required sometimes, but also maintenance of effort, which make it difficult if your budget fluctuates so he was thinking maybe there may be a legal reason to do this. A lot of times federal money has to be distributed to all eligible recipients and if we are not distributing state money to all eligible recipients we might be remiss or in violation of the law. The committee has not come up with anything that says there is a legal basis to do this. The net result is still the same, the total amount does not change. He would hate to give the colleges a more difficult time by giving them two sources of money. His tendency right now is to vote in favor of the bill and do more research before it gets to the floor of the house.

REPRESENTATIVE OLSON said he is not aware of any place in the state where their adult education is funded by this. There are local monies that go into adult ed. This money would assist the tribal college but not totally fund it.

REPRESENTATIVE MANGAN said he had an answer for his colleagues. The best reason to do this is because we currently don't. It will send a message of cooperation, respect and inclusion.

REPRESENTATIVE WADDILL said he felt the committee should vote for the bill because it is fair and equitable. He had misgivings with the previous bill because it did say "preferential." This is not preferential, this is treating everyone in a fair manner and he urges all members of the committee to vote for the bill.

REPRESENTATIVE LAWSON called for the question.

Motion/Vote: REP. MANGAN moved that HB 267 DO PASS. Motion passed unanimously.

EXECUTIVE ACTION ON HB 193

The **CHAIR** questioned **Connie Erickson** about other bills that deal with similar action being dealt with in **HB 193**. **Connie Erickson** said that **HB 161** also raises transportation rates. It raises them to twenty five cents per mile and she had drafted another bill dealing with this issue that has not been presented yet.

Motion/Vote: REP. OLSON moved that **HB 193 DO PASS**. Motion failed 6-12 with **FRITZ, JACOBSON, LEHMAN, OLSON, WALTERS, and WOLERY** voting aye.

REPRESENTATIVE LAWSON moved a substitute motion to table **HB 193** by a reverse vote on the bill.

ADJOURNMENT

Adjournment: 4:40 P.M.

REP. GAY ANN MASOLO, Chairman

NINA ROATCH, Secretary

GM/NR

EXHIBIT (edh17aad)